IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SPENCEPC,

Plaintiff,

v.

ROBERT W. BIRKS,

Defendant.

Case No.: 1:17-cv-01329

JURY TRIAL DEMANDED

PLAINTIFF'S COMPLAINT FOR UNPAID LEGAL FEES

Plaintiff SpencePC, for its Complaint against Defendant Robert W. Birks ("Birks"), states as follows:

NATURE OF THE ACTION

1. This is an action for the re-payment of outstanding fees arising from an attorney-client relationship.

PARTIES

2. Plaintiff SpencePC is a professional corporation organized under the Illinois Professional Service Corporation Act (805 ILCS 10/1 et seq.), with its principal place of business

at 405 N. Wabash Ave., Ste. P2E, Chicago, Illinois.

3. Defendant Birks is an individual and a citizen of Arizona.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over the claims stated herein by virtue of 28 U.S.C. § 1332 as the matter in controversy is between citizens of different states and exceeds the sum or value of $75,000, exclusive of interest and costs.

5. This Court has personal jurisdiction over the Defendant as a substantial part of the events or omissions giving rise to the claim against Birks occurred in this District. Birks contacted SpencePC in Illinois for representation in connection with a lawsuit filed against him in this District. SpencePC performed all of its legal work on behalf of Birks in this District.

6. Venue is proper in this Judicial District under 28 U.S.C. § 1391(b).

FACTS

7. SpencePC realleges paragraphs 1 through 6 as though fully set forth herein.

8. On or about March 22, 2016, Birks requested that SpencePC represent Birks in connection with litigation in the case *GinJoint, LLC v. Robert W. Birks* ("GinJoint Litigation"), Case No. 1:16-cv-03364, in which GinJoint sought an award of injunctive relief and damages against Birks.

9. Birks entered into a written fee agreement with SpencePC, memorialized in a retention letter attached as **Exhibit 1** to this Complaint.

10. Birks agreed to all of the terms of the agreement, which included language stating that "termination shall not relieve you of the obligation to pay for all services rendered and costs and expenses paid or incurred on your behalf in accordance with this Agreement prior to the date of such termination." Ex. 1 at ¶ 6.

11. SpencePC has duly performed all of the services so requested, and other incidental

services, all of which were set forth in invoices issued to Birks that encompass all the fees charged to Birks in association with his representation.

12. On or about September 21, 2016, Birks terminated his retention of SpencePC by telephone due to financial reasons and not in connection with the quality of the legal services provided by SpencePC. The conversation was memorialized in a written letter attached as **Exhibit 2** to this Complaint.

13. On September 21, 2016, as requested by Birks, SpencePC filed a motion to withdraw as counsel for Birks in connection with the GinJoint Litigation. Ex. 3.

14. On September 22, 2016, SpencePC informed Birks that its motion to withdraw as counsel in the GinJoint Litigation was granted. **Exhibit 3**, Electronic correspondence to Birks dated September 22, 2016.

15. On September 23, 2016, Birks requested the final invoice and informed SpencePC that he would send the appropriate funds. **Exhibit 4**, Electronic correspondence to Birks dated September 23, 2016.

16. SpencePC made numerous attempts to collect payment of the fees incurred by Birks for the services rendered by SpencePC following his request and promise to pay the invoice.

17. On October 13, 2016, SpencePC sent Birks the final invoice for the legal services provided through September 30, 2016. **Exhibit 5**, Electronic correspondence from Birks dated October 13, 2016. Birks was informed that the legal services performed to close the case were not billed. *See* Ex. 2.

18. On October 20, 2016, SpencePC informed Birks that the invoice remained unpaid and requested a teleconference regarding the matter. **Exhibit 6**, Electronic correspondence to Birks dated October 20, 2016.

19. On October 24, 2016, SpencePC informed Birks that a phone message was left regarding the unpaid invoice, and repeated its request for a teleconference regarding the matter. **Exhibit 7**, Electronic correspondence to Birks dated October 24, 2016.

20. On October 26, 2016, SpencePC left another phone message for Birks regarding the unpaid invoice, and again repeated its request for a teleconference regarding the matter. **Exhibit 8**, Electronic correspondence to Birks dated October 26, 2016.

21. On October 31, 2016, SpencePC requested a teleconference with Birks regarding the unpaid invoice and informed Birks that the outstanding payment was negatively impacting firm operations. **Exhibit 9**, Electronic correspondence to Birks dated October 31, 2016.

22. On November 8, 2016, as a courtesy, SpencePC informed Birks of the default judgement entered against him in the GinJoint Litigation. **Exhibit 10**, Electronic correspondence to Birks dated November 8, 2016.

23. Additionally, on November 8, 2016, SpencePC inquired when Birks planned to pay the outstanding invoice and informed Birks of its willingness to facilitate payment of the outstanding invoice. **Exhibit 11**, Second electronic correspondence to Birks dated November 8, 2016.

24. On December 21, 2016, after months of unanswered telephone calls and emails, SpencePC informed Birks that it would seek legal action against him to collect money due on the outstanding invoices.

25. SpencePC gave Birks the opportunity to contact SpencePC to avoid any proceedings and the opportunity to create a payment plan. Birks never replied. **Exhibit 12**, Electronic correspondence to Birks dated December 21, 2016.

26. The amount billed by SpencePC is fair and reasonable for the value of legal services provided to Birks. **Exhibit 13**, Affidavit of William C. Spence.

27. As of February 3, 2017, the outstanding invoice of $77,604.43 remains unpaid.

COUNT I – BREACH OF CONTRACT

28. SpencePC realleges paragraphs 1 through 27 as though fully set forth herein.

29. On March 22, 2016, Birks entered into a contract with SpencePC. Under the agreement, Birks agreed to retain SpencePC to provide legal services in exchange for payment of the fees associated with the services provided.

30. SpencePC provided valuable legal services to Birks, worth not less than $77,604.43, exclusive of interest thereon.

31. Birks has accepted and benefited from legal services provided by SpencePC.

32. Birks has not paid for the legal services rendered by SpencePC.

33. As a result of Birks' actions and breach of contract, SpencePC has sustained damages equal to the unpaid legal fees plus interest set forth herein.

COUNT II – QUANTUM MERUIT

34. SpencePC realleges paragraphs 1 through 33 as though fully set forth herein.

35. SpencePC provided valuable legal services to Birks, worth not less than $77,604.43, exclusive of interest thereon.

36. Birks has accepted and benefited from legal services provided by SpencePC.

37. The legal services completed by SpencePC were a reasonable means for providing Birks with a sufficient legal defense. The charges were consistent with the regular rates for services provided by SpencePC attorneys.

38. Birks has not paid for the legal services rendered by SpencePC.

39. Birks has been unjustly enriched by the receipt and enjoyment of legal services

without payment for which payment was expected and requested. The value of such enrichment is equal to the unpaid legal fees plus interest set forth herein.

JURY DEMAND

40. SpencePC demands a trial by jury of any and all issues triable of right before a jury, pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff SpencePC requests that Judgment be entered in favor of SpencePC and against Birks, and that SpencePC be granted the following relief:

(i) Money damages in the sum of $77,604.43 against Birks, or such other amount due as may be proven by SpencePC in this action;

(ii) Pre-judgment interest on each invoice, unpaid after thirty days;

(iii) Attorneys' fees and costs of collection as may be proven by SpencePC in this action; and

(iv) Such other and further relief as this Court shall deem appropriate.

Dated: February 21, 2017

Respectfully submitted,

/s/ William Cory Spence

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